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13 *Attorneys for Plaintiff Zoya Kovalenko*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 ZOYA KOVALENKO,

18 *Plaintiff,*

19 v.

20 KIRKLAND & ELLIS LLP, MICHAEL DE
21 VRIES, MICHAEL W. DEVRIES, P.C.,
22 ADAM ALPER, ADAM R. ALPER, P.C.,
23 AKSHAY DEORAS, AKSHAY S.
24 DEORAS, P.C., LESLIE SCHMIDT,
25 LESLIE M. SCHMIDT, P.C., AND MARK
26 FAHEY,

27 *Defendants.*

Case No. 4:22-cv-05990-HSG

**PLAINTIFF'S MOTION TO CHANGE
TIME TO MOVE TO STRIKE ANSWER,
DKT. NO. 142**

[Civil Local Rules 6-1(b) & 6-3]

1 Plaintiff Zoya Kovalenko (“Plaintiff”) hereby moves under Civil Local Rules 6-1(b) and
 2 6-3 to change and enlarge the time for Plaintiff to move to strike Defendants’ Answer and
 3 Affirmative Defenses to Plaintiff’s Amended Complaint, Dkt. No. 142 (the “Answer”).
 4 Specifically, Plaintiff requests an enlargement of 30 days, which would extend the deadline from
 5 Tuesday, October 15, 2024, to November 14, 2024. Despite repeated requests, Defendants have
 6 **not** consented to the instant enlargement request.

7 Plaintiff filed the instant action in October 2022. Dkt. No. 1. Defendants filed six motions
 8 to dismiss, Dkt. Nos. 24, 30, 31, 34, 35, 36, including other motions attacking the complaint, Def.
 9 Kirkland & Ellis LLP (“K&E”)’s Mot. Seal Compl., Dkt. No. 16; Defs.’ Req. Judicial Notice,
 10 Dkt. No. 29; Defs.’ Mot. Strike, Dkt. No. 37; K&E’s Anti-SLAPP Mot., Dkt. No. 38; K&E’s
 11 Renewed Mot. Seal Compl., Dkt. No. 53. Defendants did not file an answer to the Complaint,
 12 Dkt. No. 1. The Court issued an order regarding most of the aforementioned motions in August
 13 2023. Order, Dkt. No. 92. Plaintiff filed an amended complaint removing street addresses of
 14 certain defendants pursuant to the order. Am Compl., Dkt. No. 94. Defendants requested (and
 15 Plaintiff stipulated to) extend time for Defendants to answer the amended complaint, Dkt. Nos. 95
 16 & 96, only to then file a *seventh* motion to dismiss, Dkt. No. 102. The Court ruled on the seventh
 17 motion to dismiss on September 10, 2024. Dkt. No. 140. On September 24, 2024, Defendants
 18 filed the Answer, Dkt. No. 142. Federal Rule of Civil Procedure (“Rule”) 12(f)(2) provides a 21-
 19 day time frame to move to strike an answer—here, that would be Tuesday, October 15, 2024.
 20 Plaintiff requests an enlargement of 30 days to file a motion to strike Defendants’ Answer, which
 21 would extend the deadline to November 14, 2024.

22 Plaintiff’s requested extension is warranted because additional time is needed to prepare
 23 the motion to strike in light of Plaintiff’s counsel’s competing obligations, including in this case,
 24 as well as in other matters not before this Court. Declaration of Tanvir Rahman in Support of
 25 Plaintiff’s Motion to Change Time to Move to Strike Answer (“Rahman Decl.”), attached hereto,
 26 ¶ 4. With respect to the instant action, since Defendants’ Answer was filed, Plaintiff’s counsel
 27 has spent time preparing for and attending the October 2, 2024, discovery hearing held before the
 28 Honorable Judge Hixson and the October 8, 2024, case management conference before the
 [PROPOSED] ORDER GRANTING PLAINTIFF’S
 MOTION TO CHANGE TIME TO MOVE TO STRIKE ANSWER, DKT. NO. 142

1 Honorable Judge Gilliam. Rahman Decl. ¶ 4; *see* Order Setting CMC, Dkt. No. 141; Order Setting
 2 Disc. Hr’g, Dkt. No. 143; Disc. Hr’g Mins., Dkt. No. 146; Minute Entry for Further CMC Held
 3 on Oct. 8, 2024, Dkt. No. 153. Moreover, Plaintiff’s counsel has needed to spend time on
 4 preparing the amended joint case management statement (which had to be filed a day late while
 5 Defendants made additional changes) and pushing forward our efforts to timely schedule
 6 mediation. Rahman Decl. ¶ 4; *see* Am. Joint CMS, Dkt. No. 149; Minute Entry for Further CMC
 7 Held on Oct. 8, 2024, Dkt. No. 153. In addition, Plaintiff’s counsel has to push forward discovery,
 8 including amending certain discovery responses to Kirkland’s 202 requests for production and 21
 9 interrogatories by October 28, 2024, and then prepare a joint status report by November 4, 2024.
 10 Rahman Decl. ¶ 4; *see* Clerk’s Not. Scheduling Status Disc. Hr’g, Dkt. No. 148. In addition to
 11 the above substantive commitments for this case, Plaintiff’s counsel is also finalizing the motion
 12 for limited reconsideration of the Order (Sept. 10, 2024), Dkt. No. 140, and will have to prepare
 13 for forthcoming mediation, which pending finalization, should take place in November 2024.
 14 Rahman Decl. ¶ 4. Accordingly, the requested extension is needed to provide adequate time to
 15 properly research and prepare a motion to strike in order to preserve Plaintiff’s rights. Rahman
 16 Decl. ¶ 4. An extension is thus also warranted to allow Plaintiff’s counsel to devote necessary
 17 time to competing obligations in the case as mentioned above. Rahman Decl. ¶ 4. Thus, the
 18 requested extension is necessary to avoid significant prejudice to Plaintiff. Rahman Decl. ¶ 4.

19 Plaintiff’s counsel attempted but was unable to obtain a stipulation from Defendants’
 20 counsel to the time change. Rahman Decl. ¶ 5. Plaintiff’s counsel emailed Defendants’ counsel
 21 on Wednesday, October 2, 2024, requesting they consent to a 30-day extension for Plaintiff to
 22 move to strike Defendants’ Answer. Rahman Decl. ¶ 5. Defendants’ counsel did not respond, so
 23 Plaintiff’s counsel followed up on Tuesday, October 8, 2024. Rahman Decl. ¶ 5. In response,
 24 Defendants’ counsel did not agree to an extension but indicated that they may be open to doing
 25 so. Rahman Decl. ¶ 5. After taking the time and courtesy to email Defendants explaining the
 26 basis for the motion to strike and requesting that Defendants’ counsel provide a response by noon
 27 PST today, October 11, 2024, to avoid motion practice, Defendants’ counsel responded late this
 28

1 afternoon continuing to refuse to stipulate to the request for an extension. Rahman Decl. ¶ 5. As
 2 such, the instant motion follows.

3 As noted above, Plaintiff may suffer substantial harm and prejudice if the Court does not
 4 extend the time to move to strike Defendants' Answer, including potentially waived arguments
 5 regarding Defendants' Answer. Rahman Decl. ¶¶ 4, 6.

6 The previous time modifications in the case are described below. Rahman Decl. ¶ 7.

- 7 • A stipulation to specially set the briefing schedule on nine of Defendants'
 8 motions filed in response to Plaintiff's Complaint was filed on December 20,
 9 2022, Dkt. No. 43, and granted on December 21, 2022, Dkt. No. 44.
- 10 • A stipulation to extend deadlines to comply with initial discovery obligations
 11 pursuant to General Order No. 71 and to set the briefing schedule for K&E's
 12 Anti-SLAPP Motion was filed on January 9, 2023, Dkt. No. 59, and granted on
 13 January 10, 2023, Dkt. No. 61.
- 14 • A stipulation under Civil Local Rule 6-1(a) to extend time for Plaintiff to
 15 object/respond to K&E's first sets of interrogatories and requests for production
 16 from September 7, 2023, to October 9, 2023, was filed on August 30, 2023, Dkt.
 17 No. 93.
- 18 • A stipulation under Civil Local Rule 6-2 to extend time for Defendants to answer
 19 Plaintiff's Amended Complaint was filed on September 26, 2023, Dkt. No. 95,
 20 and granted on September 27, 2023, Dkt. No. 96.
- 21 • A stipulation under Civil Local Rule 6-1(a) to extend time for Plaintiff to
 22 object/respond to K&E's first sets of interrogatories and requests for production
 23 from October 9, 2023, to November 8, 2023, was filed on October 6, 2023, Dkt.
 24 No. 100.
- 25 • A stipulation under Civil Local Rules 6-1(b) and 6-2 to extend time regarding
 26 Defendants' Motion to Dismiss Plaintiff's Amended Complaint was filed on
 27 October 27, 2023, Dkt. No. 104, and granted on October 30, 2023, Dkt. No. 106.

- A stipulation under Civil Local Rule 6-2 to specially set a briefing schedule on Plaintiff's Motion to Quash K&E's subpoenas and for Protective Order and to reset hearing dates was filed on December 27, 2023, Dkt. No. 114, and granted on December 28, 2023, Dkt. No. 115.
- A stipulation under Civil Local Rule 6-2 to extend the deadline for Defendants to respond to Plaintiff's first requests for production was filed on May 9, 2024, Dkt. No. 136, and granted on May 9, 2024, Dkt. No. 138.

The Court entered a scheduling order in this case on October 9, 2024. Scheduling Order, Dkt. No. 152. The brief extension of time requested here would have no effect on the schedule for the case, given that the close of all discovery is in May 2025. Scheduling Order, Dkt. No. 152; Rahman Decl. ¶ 8.

Date: October 11, 2024
White Plains, New York

Respectfully submitted,

By: /s/ Tanvir H. Rahman

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